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NASHVILLE, TN 37219

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OFFICE OF PETITIONS

In re Application of
Hewitt et al.
Application No. 10/027,225
Filed: December 26, 2001
Attorney Docket No. N8097

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 11, 2003, to revive the above-identified application. In view of the allegation in the petition of the timely filing of a reply and the evidence submitted in support thereof, the petition is more properly a petition under 37 CFR 1.181 requesting the withdrawal of the holding of abandonment in the above-identified application and has been so treated.

The petition to withdraw the holding of abandonment is **GRANTED**.

The above-identified application was held abandoned for failure to timely reply to the non-final Office action mailed February 25, 2003, which set a shortened statutory period for reply of three (3) months. A reply was due on or before May 25, 2003. A Notice of Abandonment was mailed on November 18, 2003.

Petitioner states that the reply was in fact timely filed. To support this assertion, petitioner has submitted a copy of the return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on September 3, 2003 of 1. Response and Amendment; and 2. Extension Fee with Check No. 14959 for \$465.00. Additionally, petitioner has supplied a copy of the previously mailed correspondence which bears a certificate of mailing date of August 25, 2003.

The reply acknowledged as having been received in the USPTO on September 3, 2003 (certificate of mailing date of August 25, 2003) is not of record in the application file and cannot be located. However, MPEP 503 states that "A post card receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the reply was timely received in the USPTO but was apparently lost after receipt thereof.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

A petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee and none has been charged. After a review of the USPTO financial records, the three-month extension of time fee has never been collected. Accordingly, \$465.00 will be charged to petitioner's deposit account as authorized.

The Office sincerely apologizes for the inconvenience caused the petitioner in this matter.

This application is being returned to Technology Center AU 2632 for further examination on the merits.

Telephone inquiries concerning this decision should be directed to Paralegal Liana Chase at (703) 306-0482.

Karen Cressy for

Wan Laymon
Petitions Examiner
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for Patent Examination Policy